



**Qwest**  
1020 Nineteenth Street NW, Suite 700  
Washington, DC 20036  
Phone 202.429.3121  
Fax 202.293.0561

**Cronan O'Connell**  
Vice President-Federal Regulatory

EX PARTE

February 4, 2003

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W., TW-A325  
Washington, DC 20554

RE: CC Docket Nos. 01-338, 96-98 and 98-147, In the Matters of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Dortch:

On Friday, January 31, 2003, Qwest, filed three Ex Partes<sup>1</sup> regarding meetings which had been held with various FCC personnel to discuss Qwest's recently-proposed UNE-P Compromise,<sup>2</sup> and its amended EEL proposal which Qwest believes would streamline the current use restrictions, but also ensure the valid use of EELs.

This letter is being filed to correct an omission in one of the attachments filed with each letter. In the attachment entitled "Qwest Enhanced Extended Loop Combination ("EELs") Proposal Restrictions," the heading is corrected as follows:

Qwest Enhanced Extended Loop Combination ("EELs") Criteria Proposal

and the first sentence of the last paragraph on the first page which begins "Qwest supports commingling of DSO and/or voice grade UNE-loops" is corrected to read as follows:

"For UNE-loops that comply with the local use restrictions as documented above, Qwest supports commingling of DSO and/or voice grade UNE-loops onto DS1

---

<sup>1</sup> See letters dated Jan. 31, 2003 re: Jan. 30 meetings from Cronan O'Connell to Ms. Marlene H. Dortch re: meetings with Commissioners Copps, Adelstein and WCB Chief William Maher.

<sup>2</sup> See letter dated Jan. 30, 2003 to FCC Chairman, Michael K. Powell from R. Steven Davis, Qwest.

Ms. Marlene H. Dortch, Secretary  
February 4, 2003

Page 2 of 2

special access transport for UNE-P that transitions to UNE-loops as well as DS1 UNE-loops onto DS3 special access transport.”

Qwest has previously articulated its position on this matter.<sup>3</sup>

In accordance with FCC Rule 1.49(f), this *Ex Parte* letter is being filed electronically *via* the Electronic Comment Filing System for inclusion in the public record of the above-referenced dockets pursuant to FCC Rule 1.1206(b)(2).

Sincerely,  
/s/ Cronan O’Connell

cc:  
Michael Copps (via e-mail at [mcopps@fcc.gov](mailto:mcopps@fcc.gov))  
Jordan Goldstein (via e-mail at [jgoldste@fcc.gov](mailto:jgoldste@fcc.gov))  
Jonathan Adelstein (via e-mail at [jadelste@fcc.gov](mailto:jadelste@fcc.gov))  
Lisa Zaina (via e-mail at [lzaina@fcc.gov](mailto:lzaina@fcc.gov))  
Brent Olson (via e-mail at [bolson@fcc.gov](mailto:bolson@fcc.gov))  
William Maher (via e-mail at [wmaher@fcc.gov](mailto:wmaher@fcc.gov))  
Richard Lerner (via e-mail at [rlerner@fcc.gov](mailto:rlerner@fcc.gov))  
Jeremy Miller (via e-mail at [jmiller@fcc.gov](mailto:jmiller@fcc.gov))  
Scott Bergmann (via e-mail at [sbergmann@fcc.gov](mailto:sbergmann@fcc.gov))  
Aaron Goldberger (via e-mail at [agoldber@fcc.gov](mailto:agoldber@fcc.gov))  
Michelle Carey (via e-mail at [mcarey@fcc.gov](mailto:mcarey@fcc.gov))

Attachments

---

<sup>3</sup> See Ex Partes from Cronan O’Connell to Ms. Marlene H. Dortch dated Nov. 15, 2002 re: Nov. 14, 2003 meeting with WCB Chief William Maher, Attachment: Triennial Review, page 14 (attached hereto as Attachment A); and Dec. 19, 2002 letter re: Dec. 17 meeting with Michelle Carey, *et al.*, Attachment: EELs and Commingling Proposal, page 4 (attached hereto as Attachment B).

Attachment A



5+12  
Qwest  
1020 Nineteenth Street NW, Suite  
700  
Washington, DC 20036  
Phone 202.429.3121  
Fax 202.293.0361

Cronan O'Connell

RECEIVED

EX PARTE

November 15, 2002

NOV 15 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W., TW-A325  
Washington, DC 20554

RE: CC Docket Nos. 01-338, 96-98 and 98-147. In the Matter of Review of the  
Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers:  
Implementation of the Local Competition Provisions of the Telecommunications  
Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications  
Capability

Dear Ms. Dortch:

Yesterday, Cronan O'Connell, Mary Retka, Molly Martin and Craig Brown of Qwest Communications International Inc., met with Bill Maher, of the Federal Communications Commission's Wireline Competition Bureau. The material in the attached presentation concerning Triennial Review issues was reviewed. In particular, Qwest discussed its UNE-P Transition Plan, reviewed its Hot Cut Process, and discussed alternative options for local usage and commingling restrictions. Also discussed were general legal and policy issues including state preemption, necessary steps to avoid delays in implementation, and treatment of "de-Listed" UNEs.

In accordance with Section 1.1206(b)(2) of the FCC's Rules, an original and six copies (two for each proceeding) of this letter are being filed with your office for inclusion in the public record.

Acknowledgment and date of receipt of this submission are requested. A duplicate of this letter is provided for this purpose. Please call if you have any questions.

Sincerely,

cc: Bill Maher (via e-mail at [bmaher@fcc.gov](mailto:bmaher@fcc.gov) with attachment)

Attachment

# Qwest<sup>®</sup>



SM

*Spirit of Service*

## Triennial Review

November 14, 2002

# Triennial Review Key Points

- ❑ The Commission must preempt inconsistent state actions
- ❑ Unbundled Switching should be removed as a UNE nationally and followed by finite transition plan
- ❑ Local Usage and Commingling restrictions should be retained to incent facilities-based competition

# ***The Commission Must Preempt Inconsistent State Actions***

- ❑ **As a matter of law, the Commission may not permit states to override its unbundling determinations**
  - Section 251(d)(2) requires the Commission to strike a national policy balance in light of the benefits and costs of unbundling
  - Once the Commission strikes that balance, a deviation in either direction would be inconsistent with federal law; in other words, the Commission's unbundling decisions create both a "floor" and a "ceiling"
- ❑ **As a matter of policy, the Commission should not permit states to override its unbundling determinations**
  - Alternative would result in patchwork of unbundling rules, governed by state policy differences, protracted litigation, and uncertainty

# **The Commission Must Preempt Inconsistent State Actions (cont'd)**

- ☐ Preemptive unbundling policy would be natural extension of *UNE Remand Order*, in light of *USTA* decision
- ☐ The Commission's adoption of guidelines or presumptive determinations, with ultimate determinations by the states, would be tantamount to complete delegation
- ☐ Delegation to states is not necessary to make "granular" unbundling decisions
- ☐ Commission must guard against re-regulation of UNEs through section 271



# **The Commission Must Take Certain Steps to Avoid Frustration of Its Objectives**

- ☐ Qwest has encountered significant problems and delays in implementing the Commission's *ISP Reciprocal Compensation Order*; in many cases, CLECs simply ignored the Order
- ☐ Such delays frustrate the Commission's policies and can be avoided with certain narrow prescriptions

## Steps to Avoid Delay

- ☐ Confirm that obligation to negotiate in good faith applies to both ILECs and CLECs
- ☐ Make clear that it will permit, and expect, carriers to begin negotiations immediately, regardless of change of law provision, generally without need for arbitration
- ☐ Establish transition period that runs concurrently with change of law process
- ☐ Bar CLECs from opting into contracts to perpetuate unbundled access to elements removed from the UNE list

# **Unbundled Switching - Key Points**

Unbundled Switching

- ☐ CLECs are not impaired without access to the Unbundled Switching UNE
- ☐ The FCC has authority to mandate nationwide removal of Local Switching as a UNE
- ☐ An Order should clearly define the end date for Unbundled Local Switching as a UNE
- ☐ A "Customer Acquisition" threshold to transition CLECs from UNE-P will continue to incent inefficient market entry, at the expense of the true facilities-based competition
- ☐ Does not recognize facilities-based competition
- ☐ Does not recognize intermodal competition
- ☐ Would lead to perpetual, inefficient and, administratively unworkable unbundling requirements



**Qwest.**

Spirit of Service

# Qwest UNE-P Transition Proposal

- ❑ UNE-P no longer available to serve new customers
  - CLECs may order either Resale or Unbundled Loops subject to the terms of their individual Interconnection Agreements
  - Existing UNE-P lines will be “grandfathered” at UNE rates until completion of a transition for these lines
  - Qwest estimates that it will take 7 months to provision all anticipated requests for conversion
- ❑ Within 30 days of the date of the FCC Order, Qwest will notify all CLECs via registered letter of their transition options from UNE-P
  - The schedule will identify, by wire center, all planned transition dates and ordering deadlines
  - The CLEC will pay for Hot Cuts consistent with the terms of its interconnection agreement with the ILEC. No volume discounts are available

# Qwest CLEC Coordination Center (QCCC) is Scalable

- QCCC currently staffed to handle 1,500 UNE-L cutovers per day
- QCCC can expand to meet projected demands for UNE-P transition as well as new demand
- Qwest Hot Cut results today
  - 99.43% of Analog Coordinated Cuts Completed on Time
  - 98.19% of Digital Coordinated Cuts Completed on Time

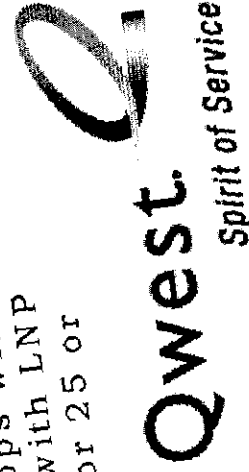
## Standard Provisioning Intervals

| Loop Type    | Loop Type |            |             |           |
|--------------|-----------|------------|-------------|-----------|
|              | 1-8 loops | 9-16 loops | 17-24 loops | 25+ loops |
| Analog/Voice | 5 days    | 6 days     | 7 days      | ICB       |
| Grade Loops  | 3 days    | 3 days     | 3 days      | ICB       |

Standard Loop Analog Loops

Quick Loop Analog-Conversion

Qwest provides a 3-day installation option, called Quick Loop, for conversion of in-place analog loops that do not require coordinated for loops with installation or cooperative testing. Quick Loop is not available for loops with LNP served over IDLC technology. Quick Loop is also offered for Quick Loop with 25 or more loops. The installation intervals for Quick Loop, and ICB for 25 or more loops, are 3 days for 1 to 8 loops, 4 days for 9 to 24 loops, and ICB for 25 or more loops.



## ***Unbundled Transport - Key Points***

- ☐ The FCC should remove dedicated interoffice transport from the UNE List in areas where it has granted Phase I Pricing Flexibility
- ☐ There is no basis to find that competing carriers are impaired without access to Unbundled Transport at TELRIC rates
- ☐ Special Access, which is constrained in price, is also a substitute for Unbundled Transport (in addition to alternative providers)
- ☐ ***Local use and commingling restrictions should continue to incent facilities-based competition***

## **Local Use and Commingling Restrictions**

- ☐ Today, Qwest's EEL offerings allow viable facilities-based local competition
- ☐ Should the Commission, however, determine that the current use restrictions need to be reviewed, Qwest proposes workable alternatives that:
  - Promote facilities-based local competition
  - Strike a competitive balance for both ILECs and CLECs

# Local Use Restriction Alternatives

## Alternatives:

### Usage Solution:

#1: CLEC self-certifies that its loops and transport carry at least 51% "local" traffic; and/or

### Architectural Solutions:

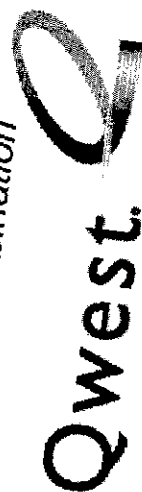
#2: Local telephone numbers associated with the EEL circuit must be provided to ILEC at time of ordering; and/or

#3: CLEC must have local interconnection service (LIS) trunks in place and Percent Local Usage (PLUs) on file associated with the EEL collocation termination point

NOTE: Further investigation of alternatives required. Appropriate solution could be a combination of alternatives

## Comments:

- ☐ Applies to all circuits the CLEC wishes to convert to EELs
- ☐ As is the case today, Internet access will not satisfy the "local" traffic criterion
- ☐ Audit provisions would apply
- ☐ Audit provisions would apply
- ☐ Would require CLEC to designate the "26 code" and the CLLI code for the point of interconnection (POI) for the LIS trunk(s)
- ☐ As is the case today, Internet access will not satisfy the "local" traffic criterion
- ☐ Audit provisions would apply
- ☐ As is the case today, Internet access will not satisfy the "local" traffic criterion
- ☐ Audit provisions would apply



*Spirit of Service*



# Local Use Restriction -- Audit Provisions

- As a condition of the purchase of or conversion to EELs, the CLEC must agree to provide traffic billing records to a third party auditor to be identified by the ILEC for review of compliance with the local use certification.
  - The ILEC may initiate an audit by an independent third party to assure compliance with the local use restriction no earlier than 6 months, after this provisioned.
  - Every 6 months, the CLEC must be prepared to provide to third party auditor, if requested, one month's CDR upon 7 day's notice. The audit will include the local usage restriction.
  - The data required for an audit would be the call detail records (CDR) in the Automated Message Accounting (AMA) format from the CLEC local voice switch.
- If the CLEC is found to be in violation of the local use restriction, the CLEC will pay: 1) all costs for the auditor and the ILEC personnel involved in the audit, 2) corrected billing back to date the circuit was established, 3) interest (penalty) on the amount of corrected billing, and 4) loss of commingling rights after three faulted audits

# Commingling Discussion

- ❑ Commingling is defined as the combination of EEL Loops and Private Line/Special Access channel termination circuits onto the same Multiplexed Interoffice Transport Facility.
- ❑ At a minimum, any alterations of existing commingling restrictions must be conditioned on the following:
  - **The UNE loop portion of EELs provisioned on the Interoffice Facility (IOF) must satisfy specified local use restriction to qualify.**
  - **The commingled Interoffice facility must terminate in a CLEC collocation (one collocation required per LATA).**
  - **DS3 UNE loops cannot be commingled with other traffic on an OCn Interoffice Facility.**
  - **Commingling of Voice Grade or DS0 UNE loops onto a mixed-use DS1 IOF would be permitted for all facilities that transition from UNE-P to UNE-L.**
  - **Using existing Special Access pricing zones, commingling of DS1 UNE Loops onto a mixed-use DS3 IOF would be allowed in Zones 2 & 3 only.**

# Appendix

# Wholesale Product Pricing Comparison

| State   | Retail 1FB | Retail 1FR | Resale 1FB | Resale 1FR | UNE-P Zone 1 | UNE-P Zone 2 | UNE-P Zone 3 | UBL     |
|---------|------------|------------|------------|------------|--------------|--------------|--------------|---------|
| AZ      | \$44.81    | \$23.74    | \$38.15    | \$21.42    | \$12.54      | \$18.28      | \$39.88      | \$14.00 |
| CO      | \$48.16    | \$25.69    | \$41.42    | \$22.82    | \$11.30      | \$17.70      | \$38.13      | \$15.85 |
| IA      | \$35.46    | \$22.61    | \$28.47    | \$19.01    | \$16.66      | \$19.19      | \$30.82      | \$20.42 |
| ID      | \$45.73    | \$28.59    | \$38.86    | \$23.10    | \$19.39      | \$27.59      | \$44.50      | \$16.47 |
| MN      | \$52.48    | \$24.65    | \$44.17    | \$21.34    | \$11.13      | \$14.45      | \$16.31      | \$13.00 |
| MT      | \$48.84    | \$26.33    | \$41.75    | \$22.55    | \$27.57      | \$28.20      | \$31.43      | \$23.72 |
| ND      | \$45.09    | \$28.78    | \$39.26    | \$25.17    | \$18.88      | \$29.02      | \$60.54      | \$17.51 |
| NE      | \$38.91    | \$28.57    | \$33.66    | \$24.97    | \$17.06      | \$33.03      | \$67.42      | \$17.79 |
| NM      | \$49.27    | \$22.84    | \$43.25    | \$20.33    | \$19.20      | \$21.49      | \$26.85      | \$18.52 |
| OR      | \$36.29    | \$22.30    | \$32.62    | \$20.35    | \$17.10      | \$28.41      | \$59.42      | \$15.36 |
| SD      | \$51.96    | \$29.34    | \$45.13    | \$25.77    | \$20.07      | \$21.45      | \$26.75      | \$19.15 |
| UT      | \$30.14    | \$25.00    | \$27.42    | \$22.74    | \$14.71      | \$17.65      | \$23.11      | \$13.03 |
| WA      | \$35.66    | \$22.33    | \$31.41    | \$19.99    | \$8.97       | \$13.96      | \$18.88      | \$14.01 |
| WY      | \$38.00    | \$34.19    | \$34.60    | \$33.63    | \$22.75      | \$36.07      | \$27.22      | \$27.10 |
| Average | \$42.91    | \$26.07    | \$37.16    | \$23.08    | \$16.95      | \$23.32      | \$36.52      | \$17.57 |

**Wholesale Pricing Is Mandated And De-Averaged:**

- State PUCs
- FCC (271)

**Take Away:** Recent Price Reductions On UNE-P and UBL Create Additional Margin Opportunity For CLECs.

# National RBOC Exposure To UNE-P Migration

|    | State          | 2000<br>Pop. | UNE<br>Rates | Retail<br>revenue | Gross<br>Margin | % Gross<br>Margin | Cable<br>Networks |
|----|----------------|--------------|--------------|-------------------|-----------------|-------------------|-------------------|
| 1  | California     | 33,871,648   | \$18.08      | \$29.81           | \$11.73         | 39%               |                   |
| 2  | Texas          | 20,851,820   | \$19.83      | \$39.63           | \$19.80         | 50%               |                   |
| 3  | New York       | 18,976,457   | \$17.56      | \$31.62           | \$14.06         | 44%               |                   |
| 4  | Florida        | 15,982,378   | \$21.35      | \$33.99           | \$12.64         | 37%               |                   |
| 5  | Illinois       | 12,419,293   | \$18.04      | \$31.36           | \$13.32         | 42%               |                   |
| 6  | Pennsylvania   | 12,281,054   | \$19.43      | \$32.18           | \$12.75         | 40%               |                   |
| 7  | Ohio           | 11,353,140   | \$15.14      | \$34.02           | \$18.88         | 55%               |                   |
| 8  | Michigan       | 9,938,444    | \$16.19      | \$40.74           | \$24.55         | 60%               |                   |
| 9  | New Jersey     | 8,414,350    | \$13.75      | \$28.04           | \$14.29         | 51%               |                   |
| 10 | Georgia        | 8,186,453    | \$17.84      | \$40.44           | \$22.60         | 56%               |                   |
| 11 | North Carolina | 8,049,313    | \$19.96      | \$36.18           | \$16.22         | 45%               |                   |
| 12 | Virginia       | 7,078,515    | \$18.40      | \$33.21           | \$14.81         | 45%               |                   |
| 13 | Massachusetts  | 6,349,097    | \$20.48      | \$37.42           | \$16.94         | 45%               |                   |
| 14 | Indiana        | 6,080,485    | \$17.16      | \$32.41           | \$15.25         | 47%               |                   |

**Take Away:** Competitors Elect UNE-P Strategy In The Following Circumstances:  
(1) Large Population Markets, and (2) High Margin Markets, and (3) Where Cable Telephony Platform Is Not Currently In Place.

# National RBOC Exposure

## To UNE-P Migration

|    | State          | 2000<br>Pop. | UNE<br>Rates | Retail<br>revenue | Gross<br>Margin | % Gross<br>Margin | Cable<br>Networks    |
|----|----------------|--------------|--------------|-------------------|-----------------|-------------------|----------------------|
| 15 | Washington     | 5,894,121    | \$19.07      | \$31.98           | \$12.91         | 40%               | Seattle/Tacoma - ATT |
| 16 | Tennessee...   | 5,689,283    | \$19.34      | \$35.14           | \$15.80         | 45%               |                      |
| 17 | Missouri       | 5,595,211    | \$20.58      | \$36.58           | \$16.00         | 44%               |                      |
| 18 | Wisconsin      | 5,363,675    | \$20.65      | \$39.21           | \$18.56         | 47%               |                      |
| 19 | Maryland       | 5,296,486    | \$16.62      | \$37.07           | \$20.45         | 55%               |                      |
| 20 | Arizona        | 5,130,632    | \$17.23      | \$32.74           | \$15.51         | 47%               | Phoenix - Cox        |
| 21 | Minnesota....  | 4,919,479    | \$15.72      | \$32.81           | \$17.09         | 52%               | Minneapolis - ATT    |
| 22 | Louisiana...   | 4,468,976    | \$21.14      | \$35.63           | \$14.49         | 41%               |                      |
| 23 | Alabama        | 4,447,100    | \$23.63      | \$39.29           | \$15.66         | 40%               |                      |
| 24 | Colorado..     | 4,301,261    | \$20.52      | \$34.48           | \$13.96         | 40%               | Denver - ATT         |
| 25 | Kentucky.      | 4,041,769    | \$20.19      | \$41.39           | \$21.20         | 51%               |                      |
| 26 | South Carolina | 4,012,012    | \$21.23      | \$38.02           | \$16.79         | 44%               |                      |
| 27 | Oklahoma       | 3,450,654    | \$21.39      | \$31.96           | \$10.57         | 33%               |                      |
| 28 | Oregon...      | 3,421,399    | \$19.98      | \$33.36           | \$13.38         | 40%               | Portland - ATT       |
| 29 | Connecticut    | 3,405,565    | \$18.84      | \$33.74           | \$14.90         | 44%               |                      |
| 30 | Iowa...        | 2,926,324    | \$19.67      | \$29.96           | \$10.29         | 34%               |                      |

**Take Away: Competitors Elect UNE-P Strategy In The Following Circumstances:**  
**(1) Large Population Markets, and (2) High Margin Markets, and (3) Where Cable Telephony Platform Is Not Currently In Place.**

# National RBOC Exposure

## To UNE-P Migration

|    | State                | 2000 Pop. | UNE Rates | Retail revenue | Gross Margin | % Gross Margin | Cable Networks  |
|----|----------------------|-----------|-----------|----------------|--------------|----------------|-----------------|
| 31 | Mississippi          | 2,844,658 | \$25.17   | \$42.00        | \$16.83      | 40%            |                 |
| 32 | Kansas               | 2,688,418 | \$18.41   | \$34.13        | \$15.72      | 46%            |                 |
| 33 | Arkansas             | 2,673,400 | \$18.20   | \$51.63        | \$33.43      | 65%            |                 |
| 34 | Utah                 | 2,233,169 | \$18.06   | \$30.59        | \$12.53      | 41%            | Salt Lake - ATT |
| 35 | Nevada               | 1,998,257 | \$25.65   | \$30.55        | \$4.90       | 16%            |                 |
| 36 | New Mexico           | 1,819,046 | \$21.59   | \$30.22        | \$8.63       | 29%            |                 |
| 37 | West Virginia        | 1,808,344 | \$29.68   | \$49.57        | \$19.89      | 40%            |                 |
| 38 | Nebraska             | 1,711,263 | \$36.18   | \$37.95        | \$1.77       | 5%             | Omaha - Cox     |
| 39 | Idaho                | 1,293,953 | \$27.97   | \$34.04        | \$6.07       | 18%            |                 |
| 40 | Maine                | 1,274,923 | \$19.27   | \$36.92        | \$17.65      | 48%            |                 |
| 41 | New Hampshire        | 1,235,786 | \$21.68   | \$34.43        | \$12.75      | 37%            |                 |
| 42 | Rhode Island         | 1,048,319 | \$21.01   | \$35.35        | \$14.34      | 41%            |                 |
| 43 | Montana              | 902,195   | \$28.12   | \$36.29        | \$8.17       | 23%            |                 |
| 44 | Delaware             | 783,600   | \$17.78   | \$31.86        | \$14.08      | 44%            |                 |
| 45 | South Dakota         | 754,844   | \$24.49   | \$36.21        | \$11.72      | 32%            |                 |
| 46 | North Dakota         | 642,200   | \$23.70   | \$37.25        | \$13.55      | 36%            |                 |
| 47 | Vermont              | 608,827   | \$18.94   | \$37.77        | \$18.83      | 50%            |                 |
| 48 | District of Columbia | 572,059   | \$15.86   | \$31.22        | \$15.36      | 49%            |                 |
| 49 | Wyoming              | 493,782   | \$27.11   | \$42.66        | \$15.55      | 36%            |                 |

**Take Away: Competitors Elect UNE-P Strategy In The Following Circumstances:**  
**(1) Large Population Markets, and (2) High Margin Markets, and (3) Where Cable Telephony Platform Is Not Currently In Place.**

# Qwest Trends

## Local Competition

- In Qwest today, local competition includes CLECs, cable companies and wireless companies (see attached pricing plans)
- Migration from retail to wholesale is not one for one
- For UNE-P, Qwest anticipates that in 2003 UNE-P growth predominately in residential marketplace as rates continue to decrease due to cost dockets



Attachment B



**Qwest**  
1020 Nineteenth Street NW, Suite 700  
Washington, DC 20036  
Phone 202.429.3121  
Fax 202.293.0561

**Cronan O'Connell**  
Vice President-Federal Regulatory

EX PARTE

December 19, 2002

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W., TW-A325  
Washington, DC 20554

RE: CC Docket Nos. 01-338, 96-98 and 98-147, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Dortch:

On December 17<sup>th</sup>, Cronan O'Connell and Craig Brown of Qwest Communications International Inc. ("Qwest"), met with Michelle Carey, Thomas Navin, Tony Dale, Ian Dillner, Michael Engle, Jeremy Miller, Uzoma Onyeije and Julie Veach of the Federal Communications Commission Competitive Pricing Division. The materials in the attached presentations detailing Qwest's proposal for the modification of the EEL local use restrictions and the commingling restrictions were discussed. Qwest discussed the fact our proposed EEL Local Use Restrictions included a three prong test: 1) the CLEC would self-certify that the EEL facility in question carried at least 51% local traffic and we clarified that alternatively the CLEC could self-certify that the CLEC was the exclusive local carrier for the customer; 2) the EEL must terminate into a collocation arrangement; and 3) the CLEC has local interconnection service (LIS) in place and the Percent Local Usage (PLUs) on file with the ILEC associated with the EEL collocation arrangement where the EEL terminates.

With regards to #3 above, "Percent Local Usage" (PLU) is a calculation which represents the ratio of the local minutes to the sum of local and intraLATA toll minutes sent between the Parties over the Local Interconnection Service Trunks. Directory Assistance Services, CMRS traffic, transiting calls from other LECs and Switched Access Services are not included in the calculation of PLU. Further, this process is in place today as reflected in our Statement of Generally Available Terms (SGAT) and was agreed to between the CLEC community and the ILECs, and filed with the State Public Utility Commissions. Currently this process is in effect in all states in the Qwest region except for MN. See the detailed language below as reflected in Qwest SGATs:

7.2 Exchange of Traffic  
7.2.2.9.3.2

Exchange Service (EAS/Local) traffic and Switched Access traffic including Jointly Provided Switched Access traffic, may be combined on the same trunk group. If combined, the originating Carrier shall provide to the terminating Carrier, each quarter, Percent Local Use (PLU) factor(s) that can be verified with individual call record detail. Call detail or direct jurisdictionalization using Calling Party Number information may be exchanged in lieu of PLU if it is available.

7.3 Reciprocal Compensation

To the extent a Party combines Exchange Service (EAS/Local), Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers), and Jointly Provided Switched Access (InterLATA and IntraLATA calls exchanged with a third-party IXC) traffic on a single LIS trunk group, the originating Party, at the terminating party's request will declare quarterly PLU(s). Such PLU's will be verifiable with either call summary records utilizing Calling Party Number information for jurisdictionalization or call detail samples. The terminating Party should apportion per minute of use (MOU) charges appropriately.

In accordance with FCC rule 1.49(f), this *Ex Parte* letter and attachments are being filed electronically *via* the Electronic Comment Filing System for inclusion in the public record of the above-referenced dockets pursuant to FCC Rule 1.1206(b)(2).

Sincerely,  
/s/ Cronan O'Connell

cc: Michelle Carey ([mcarey@fcc.gov](mailto:mcarey@fcc.gov))  
Thomas Navin ([tnavin@fcc.gov](mailto:tnavin@fcc.gov))  
Tony Dale ([tdale@fcc.gov](mailto:tdale@fcc.gov))  
Ian Dillner ([idillner@fcc.gov](mailto:idillner@fcc.gov))  
Michael Engle ([mengle@fcc.gov](mailto:mengle@fcc.gov))  
Jeremy Miller ([jmiller@fcc.gov](mailto:jmiller@fcc.gov))  
Uzoma Onyeije ([uonyeije@fcc.gov](mailto:uonyeije@fcc.gov))  
Julie Veach ([jveach@fcc.gov](mailto:jveach@fcc.gov))

attachments



**Qwest**  
1020 Nineteenth Street NW, Suite 700  
Washington, DC 20036  
Phone 202.429.3121  
Fax 202.293.0561

**Cronan O'Connell**  
Vice President-Federal Regulatory

EX PARTE

November 21, 2002

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W., TW-A325  
Washington, DC 20554

RE: CC Docket Nos. 01-338, 96-98 and 98-147, In the Matter of Review of the  
Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers;  
Implementation of the Local Competition Provisions of the Telecommunications  
Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications  
Capability

Dear Ms. Dortch:

The attached paper titled: *Regulation of an Element Found No Longer to Meet Section 251's "Necessary and Impair" Test* filed on behalf of Qwest Communications International Inc., has been filed in the above docketed proceedings.

In accordance with FCC rule 1.49(f), this *Ex Parte* paper is being filed electronically *via* the Electronic Comment Filing System for inclusion in the public record of the above-referenced dockets pursuant to FCC Rule 1.1206(b)(1).

Sincerely,  
/s/ Cronan O'Connell

cc's (all via E-mail)

Christopher Libertelli ([cliberti@fcc.gov](mailto:cliberti@fcc.gov))  
Matthew Brill ([mbrill@fcc.gov](mailto:mbrill@fcc.gov))  
Jordon Goldstein ([jgoldste@fcc.gov](mailto:jgoldste@fcc.gov))  
Daniel Gonzalez ([dgonzale@fcc.gov](mailto:dgonzale@fcc.gov))  
Bill Maher ([wmaher@fcc.gov](mailto:wmaher@fcc.gov))  
Michelle Carey ([mcarey@fcc.gov](mailto:mcarey@fcc.gov))  
Thomas Navin ([tnavin@fcc.gov](mailto:tnavin@fcc.gov))  
Brent Olson ([bolson@fcc.gov](mailto:bolson@fcc.gov))  
Robert Tanner ([rtanner@fcc.gov](mailto:rtanner@fcc.gov))

Attachment

***Regulation of an Element Found No Longer to Meet Section 251's  
"Necessary and Impair" Test***

- I. A BOC's Provision of an Element Required Pursuant to Section 271, Exclusively, Should be Regulated Subject Only to the Commission's General Pricing Authority Under Sections 201 and 202 of the Act.**
  - A. The Commission Already Has Established that Once an Element Comes Off Section 251's Unbundling List and Is Provided Solely Pursuant to Section 271, the Only Pricing Requirements that Apply Are The Generic Title II Pricing Requirements.**

The Commission already has recognized that once it has "determined that a competitor is not impaired in its ability to offer services without access to [a particular] element," and the element is offered pursuant only to Section 271 of the Act, the "market price should prevail, as opposed to a regulated rate which, at best, is designed to reflect the pricing of a competitive market."<sup>1/</sup> Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, 3906 ¶ 473 (1999) ("*UNE Remand Order*"). While the Commission recognized that Section 271 might in many cases impose an independent obligation on the BOC to provide the element in question, the Commission correctly concluded that "the prices, terms, and conditions set forth under Sections 251 and 252 do *not* presumptively apply to the network elements on the competitive checklist of Section 271." *Id.* at 3905 ¶ 469 (emphasis added). Rather, the Commission determined that the Section 252 pricing requirements apply *only* when the checklist element is unbundled pursuant to Section 251.

---

<sup>1/</sup> Qwest notes that Verizon has filed a Petition for Forbearance, CC Docket No. 01-338 (July 29, 2002), arguing that where the Commission has found that an element no longer satisfies the section 251(d)(2) test, it should deem the corresponding section 271 checklist item to be satisfied and thus forbear under 47 U.S.C. § 160(c) from requiring its provision. For purposes of this ex parte, however, we have assumed that the corresponding section 271 obligation is still in force.

Where the Commission finds that a network element no longer meets the unbundling standards in Section 251(d)(2), because competitors “can acquire [the element] in the marketplace at a price set by the marketplace . . . it would be counterproductive to mandate that the incumbent offers the element at forward-looking prices.” *Id.* at 3906 ¶ 473. Instead, the Commission determined, “the applicable prices, terms and conditions for that element [should be] determined [solely] in accordance with Sections 201(b) and 202(a).” *Id.* at 3905 ¶ 470.

**B. The Commission Should Relax the Tariffing Requirements for a BOC’s Provision of an Element That No Longer Must Be Unbundled Pursuant to Section 251’s “Impair” Test.**

Having found that it would be counterproductive to apply TELRIC to the prices for checklist elements that are found to no longer meet the impair test under Section 251, the Commission should similarly conclude that it is not appropriate to subject the provision of that element to dominant carrier regulation. Although *all* telecommunications services provided by an ILEC are presumptively treated as dominant, *see, e.g.*, Notice of Proposed Rulemaking, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 16 FCC Rcd, 22745, 22747-48 ¶ 5 (2001); Report and Order, *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756, 15767 ¶ 13 (1997) (“*LEC Classification Order*”), in finding that an element no longer meets the Section 251 “impair” test, the Commission makes the same findings that are essential to support the conclusion that BOCs lack market power with respect to the provision of that element. Specifically, in finding that CLECs would not be impaired without *any* access to an incumbent’s network element, the Commission *necessarily* finds that CLECs can practicably obtain that element (or suitable substitutes for that element) elsewhere (including through self-provisioning) and that there are no material barriers to doing so. If the BOC cannot “profitably . . . raise and

sustain” prices “significantly above competitive levels by restricting its own output,” Commission precedent establishes that with respect to the provision of that element, the BOC is non-dominant. *LEC Classification Order* at 15762-63 ¶ 6.<sup>2/</sup> The Commission accordingly should both find that an ILEC’s provision of an element that has been found to no longer meet the 251 checklist is nondominant, and forbear under Section 10 of the Act from dominant carrier regulation in connection with the incumbent’s provision of such an element.<sup>3/</sup>

At a minimum, even if the Commission is not prepared to make a finding that the BOC’s provision of such elements is non-dominant—or is not prepared to forbear entirely from dominant carrier regulation—the Commission should require only streamlined federal tariffing of the element, such as that available under the Commission’s pricing flexibility rules.<sup>4/</sup> The Commission has recognized that such modified tariff regulation is appropriate where the market

---

<sup>2/</sup> The Commission has consistently recognized in finding services non-dominant that not just actual but “potential competition can ensure that prices continue to remain just and reasonable” enough to support a finding that the market will not be subject to distortion by any one player. *Order, Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3323-34 ¶ 96 (1995) (“*AT&T International Reclassification Order*”).

<sup>3/</sup> Given the Commission’s conclusion that section 201 will govern the provision of elements offered pursuant to section 271 of the Act, dominant carrier pricing regulation would no longer be “necessary to ensure that the [ILEC’s] charges [or] practices” in connection with that element “are just and reasonable and are not unjustly or unreasonably discriminatory.” 47 U.S.C. § 160(a). Such forbearance will “promote competitive market conditions.” 47 U.S.C. § 160(b). See *LEC Classification Order* at 15806-07 ¶ 88 (recognizing that dominant carrier tariff regulations can “stifle price competition and marketing innovation”); see also *AT&T International Reclassification Order* at 3288 ¶ 27; Second Report and Order, *Implementation of Sections 3(N) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1509 ¶ 175 (1994).

<sup>4/</sup> Even if the Commission determines that some form of minimal tariff regulation is appropriate for such elements, any such regulation should be imposed only on the *federal* level. As Qwest and others have explained, any *state* regulation of the pricing or other terms under which de-listed elements are offered would be preempted. See Ex Parte Letter from Herschel L.

has become sufficiently competitive, and there are enough available alternatives, to prevent the ILEC from “exploit[ing] over a sustained period any individual market power,” even if the Commission could not conclude that the ILEC could meet the test for a showing of non-dominance.<sup>5/</sup> Thus, while the Commission was not prepared to make a finding that ILEC’s provision of interstate intraLATA toll service was non-dominant, for example, the Commission found the market sufficiently competitive to justify a modified tariffing regime, permitting ILECs to file tariffs on one day’s notice without cost support and with a presumption of lawfulness. *Pricing Flexibility Order* at 14249-51. The Commission similarly permitted ILECs to offer contract tariffs with tailored term and volume discounts. *Id.* at 14234.

A finding of no-impairment clearly meets this “substantial competition” standard for relaxed tariffing requirements. As noted above, the CLEC’s other options remove any ability or incentive for the incumbent to act anticompetitively. Modified tariff regulation would allow the Commission additional pricing authority to supplement its general Section 201 authority, while still providing BOCs with the flexibility to offer competitive services and the freedom from the full panoply of burdensome dominant carrier regulation.

---

Abbott, Jr., BellSouth, R. Steven Davis, Qwest, Paul Mancini SBC, & Susanne Guyer, Verizon to Michael K. Powell, Chairman, FCC at 8-9 (Nov. 19, 2002).

<sup>5/</sup> See Fifth Report and Order, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, 14 FCC Rcd 14221, 14247-48 ¶ 53 (1999) (“*Pricing Flexibility Order*”), *aff’d sub. nom. WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).



**II. The Requirements of Providing an Element Under Section 251 Are Not Applicable When the Element Is Provided Solely Subject to Section 271.**

**A. The Specific Terms and Conditions Required Under Section 251 Do Not Apply to Elements Provided Under Section 271.**

As noted above, the Commission has expressly concluded that “the prices, terms, and conditions set forth under Sections 251 and 252” are not applicable to an incumbent’s provision of a network element that no longer must be unbundled pursuant to Section 251, and is provided solely pursuant to Section 271. *UNE Remand Order* at 3905-06 ¶¶ 469-73. The Commission’s discussion in the *UNE Remand Order* applies equally to both pricing and the other terms and conditions that the Commission has required under Section 251(c)(3) of the Act. The only way that the requirements of either Section 251(c)(3) or Section 252(d)(1) could apply to checklist elements provided solely under Section 271 of the Act is through Section 271(c)(2)(B)(ii), which authorizes the Commission to ensure that BOCs seeking long distance authority provide “[n]ondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1).” Because the plain language of the statute does not differentiate between the applicability of the requirements of Sections 251(c)(3) and 252(d)(1), the Commission’s determination in the *UNE Remand Order* that this provision of Section 271 provides no basis for continuing to apply the pricing terms of Section 252(d)(1) to an element *that no longer must be unbundled under Section 251* must similarly preclude the continued application of the terms and conditions under Section 251(c)(3).

This outcome makes perfect sense. Having determined that a CLEC is not impaired without access to an element because that element is competitively available and is no longer included in the unbundled elements referred to in Section 251(c)(3), there are no remaining applicable “requirements” under Section 251(c)(3) (or 252(d)(1)) as to that element. At that point, therefore, the reference in the Section 271 checklist to the “requirements” of Section

251(c)(3) with respect to that element should be deemed automatically satisfied or simply nullified. This statutory reading also is the only one that produces a sensible policy result: if an element is competitively available, there is no reason to mandate the particular terms under which that element is offered whether by a BOC or any other ILEC. Since, as the Commission has recognized, the goal of Section 251 unbundling is to produce terms that “at best, [are] designed to reflect” the terms that would result in “a competitive market,” *UNE Remand Order* at 3906 ¶ 473, it makes little sense to regulate the terms of any class of providers in the market once the market has been found to be functioning in a competitive fashion.

Thus, once the Commission determines that an element on the 271 checklist no longer must be unbundled under Section 251, a BOC that seeks to obtain or maintain its long distance authorization simply must provide that element in accordance with the general nondiscrimination and reasonableness requirements contained in Sections 201 and 202. For example, Section 251(c)(3) would no longer directly impose the combinations rules on an element that the Commission has determined need no longer be unbundled at all under Section 251. And the combination rules are not—and cannot—be reintroduced through Section 271. Indeed, the Commission already reached this conclusion in the Texas 271 proceeding, recognizing first that where the requirement to combine elements under Section 251 had been extinguished, Section 271 supplied no independent basis to require such combination. *See Memorandum Opinion and Order, Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354, 18474-75 ¶ 235 (2000) (where Section 251 does not require combination, SWBT “need not provide [that combination] at all.”). Second, the

Commission concluded that SWBT certainly could not be precluded from *charging* for performing such combinations where it did in fact provide them. *Id.* (Commission “precluded . . . from denying [SWBT’s 271] application on the ground that SWBT has somehow violated the Act by setting particular pricing conditions on the provision of UNE combinations” that were no longer required under Section 251.). Even if the Commission determined that an ILEC could be required to provide some combinations pursuant to Section 201, the ILEC would simply have to do so in a nondiscriminatory and reasonable manner, and there would be no valid basis to prohibit or otherwise regulate reasonable charges for the work required to provide those combinations.

For example, to the extent that loops remain subject to Section 251 of the Act , the BOCs (and all incumbent LECs) will continue to provide them subject to the requirements of that provision. If, however, the Commission were to remove switching from Section 251’s ambit, BOCs would continue to provide switching *solely* pursuant to Section 271, and thus at market prices, rather than at TELRIC. A CLEC that wished to obtain the equivalent of UNE-P at that point accordingly would be entitled to obtain the TELRIC rate for the loop, but would have to pay the market price for switching, including the cost for any work the ILEC were required to do to combine the loop with the switch. The same would be true with respect to the shared transport element (and any work required to combine shared transport with another element), which could no longer meet the Section 251 “impair” test if switching were found to no longer meet that test. *See UNE Remand Order* at 3708 (finding that “[i]ncumbent LECs are not required to unbundle shared transport where they are not required to offer unbundled local circuit switching”). Of course, a BOC alternatively could provide an entirely market-priced product, at its option,

charging a market rate for all elements typically included in “UNE-P” and treating combinations charges in whatever manner the market demands.

**B. The Provisions of 252 Relating to Interconnection Agreements Do Not Apply to the Provision of an Element That Is Required Solely Under Section 271.**

The Commission should clarify that terms for elements a BOC must provide pursuant to Section 271—but no longer pursuant to Section 251(c)(3)—need not be included in Section 252(a)(1) interconnection agreements. The Commission already has expressly recognized that obligations not created by section 251 of the Act need not be addressed in parties’ interconnection agreements. *See* Declaratory Ruling, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 14 FCC Rcd 3689, 3703 ¶ 22 (1999) (*cert. denied, sub. nom. Global Naps, Inc. v. FCC*, 122 S. Ct. 808 (2002)) (“Currently, the Commission has no rule governing inter-carrier compensation for ISP-bound traffic. In the absence of such a rule, parties may *voluntarily* include this traffic within the scope of their interconnection agreements under sections 251 and 252 of the Act.”) (emphasis added). The Commission recently confirmed this position in its order responding to Qwest’s petition for declaratory ruling regarding the scope of section 252(a)(1)’s filing requirements. There, the Commission indicated that, as contemplated by sections 251 and 252, an “interconnection agreement” was an “agreement[] to implement” a carrier’s duties pursuant to “sections 251(b) and (c).” Memorandum Opinion and Order, *Qwest Communications International Inc.*, WC Docket No. 02-89, FCC 02-276 (rel. Oct. 4, 2002) (emphasis added).

The contrary rule—that BOCs are required to include the terms and conditions of the provision of elements required solely under section 271 in their section 252 interconnection agreements—would have perverse results. As noted above, once provision of an element is no longer required under section 251 but only under section 271, the pricing of that element is

properly subject only to the market-based pricing principles of 47 U.S.C. 201. If, however, BOCs were required to include the pricing terms for such elements in their 252 agreements, those pricing terms would be subject to the arbitration requirements through which most 252 agreements are determined. Thus, if a CLEC did not want to agree, during negotiations with the BOC, to the market price offered by the BOC for a particular section 271 checklist item, the CLEC could demand arbitration, which would mean that the *state* ultimately would have to set the rate for the provision of that element. But this result would be entirely inconsistent with the fact that the pricing of that element would be subject only to the reasonableness and non-discrimination requirements of section 201.

**III. Once the Commission Recognizes that the Marketplace Has Changed Such That an Element Should Come Off the List, It Should Ensure That Its Decision Is Implemented as Soon as Possible To Eliminate Regulatory Lag.**

In finding that an element no longer satisfies the impair test, the Commission necessarily recognizes that there is no longer any justification under the Act, or the policies of the Act, to mandate that ILECs unbundle that element—especially at TELRIC rates. To the contrary, continuing to require unbundling at below-cost TELRIC rates will discourage facilities-based investment in favor of economically inefficient, and irrational, UNE-based entry. Thus, the Act requires that any transition for eliminating the unbundling obligation for an element be streamlined and limited, so that ILECs are not subject to unnecessary burdens and so that the industry as a whole can benefit from increased, market-based competition as soon as practically possible.

As the industry's experience with the implementation of the *ISP Remand Order*<sup>6/</sup> demonstrates, however, in order to achieve that goal, the Commission needs to take explicit actions to ensure a smooth and short transition period, rather than leaving this issue to the parties to work out. Otherwise, it may well take years for the Commission's determinations to be implemented. Because interconnection agreements are usually several years long, are subject to the pick and choose rules, and are typically renewable, it can be extremely difficult to extirpate an interconnection agreement obligation that has since been invalidated by subsequent FCC rulings. Even where the agreements have "change of law" provisions, these provisions in some cases may not be triggered until the Commission's order has been finally appealed (and any remand proceedings are complete); further, CLECs typically have contended that the change in law provisions are not self-executing, so that any resulting revisions to the agreement must be negotiated. When the Commission eliminates an unbundling or similar obligation, CLECs clearly do not have any incentive to facilitate that elimination; rather, they have strong incentives to delay the process. Indeed, in Qwest's own experience, after the issuance of the *ISP Remand Order*, some CLECs did not even bother to respond to Qwest's repeated requests that the FCC's new rules be implemented. Thus, as a practical matter, notwithstanding the Commission's recognition that ISP traffic is not properly subject to the reciprocal compensation requirements and that payment of such compensation on ISP-bound traffic had created significant, market distorting opportunities for regulatory arbitrage, ILECs continue in many instances to be subject to obligations to pay reciprocal compensation on ISP-bound traffic.

---

<sup>6/</sup> Order on Remand, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*").

To avoid a repeat of this experience, the Commission should accordingly take several actions to facilitate the transition to its new rules. First, the Commission should make clear that it will expect, and permit, parties to begin the process of negotiating new agreements or provisions right away to implement the change in law, whether or not the parties' agreement provides that the amended provision would be immediately effective. In this way, the parties could ensure that the new agreement or term would be in place as soon as the "change in law" provision was satisfied *or* as soon as the existing agreement has expired—whichever is first. This rule should apply even if the contract provides that no negotiations need begin until after the order is final and all appeals have been exhausted. The Commission should make clear that any refusal to negotiate the required amendment would be deemed a violation of the section 252(b)(5) duty to negotiate in good faith. Further, the Commission should clarify that *either* party to the interconnection agreement can trigger the duty to negotiate the required revisions. See Order on Reconsideration, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 17806, 17825-26 ¶¶ 34, 35 (2000) (both incumbent and competitive LECs have the duty to negotiate open issues in interconnection agreements in good faith).

Second, the Commission should make clear that any new agreements that are entered into following the issuance of the Commission's order, or any agreements that are renegotiated, *must* be consistent with the Commission's amendment to the rules (unless, of course, the Commission order has been vacated by the court of appeals). In other words, the Commission should make clear that states are specifically preempted from requiring unbundling that is inconsistent with the Commission's revised rules simply because any appellate review of those rules is not yet complete. The Commission adopted essentially this rule in the *UNE Remand Order*, at

3766 ¶ 151 (“We expect parties to implement the requirements of this Order as they negotiate new interconnection agreements.”) and in the *ISP Remand Order*, at 9189 ¶ 82 (“The interim compensation regime we establish here applies as carriers renegotiate expired or expiring interconnection agreements.”); it should do so more explicitly here. Further, the Commission should make clear that CLECs cannot evade this rule by trying to opt in to or renew existing agreements that implement the superceded obligation. For this purpose, the Commission should clarify that agreements renewed after the issuance of the FCC order are “new” agreements, including agreements that are renewed on a month-by-month basis, and thus would be subject to whatever the new Commission rules are (including any transition period as discussed below).

Third, to the extent the Commission concludes that it must adopt a transition period to allow UNE-based CLECs with embedded bases to adapt their plans to accommodate the new rules, it should establish a discrete time period for that transition which will begin the date the Commission’s order is issued. The Commission should make clear that the transition period will allow CLECs whose agreements expire during that period, or CLECs whose rights would be affected by the triggering of the change of law provisions in an existing agreement, to enjoy whatever the Commission’s transition rules are until the expiration of that period—e.g. 12 months from the date of the issuance of the order. However, CLECs whose agreements are longer than the transition period and whose agreements are not impacted during the transition period by the change in law, will not be permitted to take advantage of that transition period at all, since it is outside the calendar timeframe that the FCC provided for the transition; rather, they will be expected to begin preparing for the transition during the course of their existing agreement. Thus, if the Commission were, for example, to adopt a one year transition period for an element that was coming off the UNE list and it took an ILEC and a CLEC three months to



determine the terms of a new agreement consistent with the Commission's new rules, the remaining transition period would be nine months since in total that would have given the CLEC the full year mandated by the Commission.

# Qwest®



SM

*Spirit of Service*

**EELs and Commingling Proposal  
December 17, 2002**

# Proposed EEL Local Use Restrictions

- Qwest proposes a streamlined alternative to the current restrictions that promotes the availability of UNEs for facilities-based local competition and strikes a competitive balance between ILECs & CLECs

## Standard

- CLEC self-certifies that each loop/transport combination facility carries at least 51% "local" traffic; and
- EEL terminates to a collocation arrangement; and
- CLEC has local interconnection service (LIS) trunks in place and Percent Local Usage (PLUs) on file with the ILEC which are associated with the EEL collocation arrangement where the EEL terminates

12/17/02



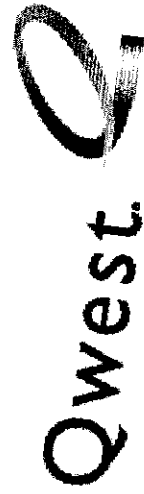
*Spirit of Service*

# **Proposed EEL Local Use Restrictions**

## **EEL Measurements / Audits**

- ☐ CLECs converting from a UNE-P combination to an EEL will automatically be presumed to meet the "local" standard, with a follow-up certification by the CLEC to be provided no later than six months after the conversion
- ☐ As is the case today, Internet access will not satisfy the "local" traffic criterion
- ☐ As a condition of the purchase of or conversion to EELs, the CLEC must agree to review of compliance with the local use certification.
  - The ILEC may initiate an audit by an independent third party to assure compliance with the local use restriction no earlier than 6 months, after this provisioned.
  - Every 6 months, the CLEC must be prepared to provide to third party auditor, if requested, one month's call detail recordings (CDR) upon 7 day's notice. The audit will include verification that the traffic carried over the facility or facilities in question meets the local usage restriction.
  - The data required for an audit would be the CDR in the AMA format from the CLEC local voice switch.
- ☐ If the CLEC is found to be in violation of the local use restriction, the CLEC will pay: 1) all costs for the auditor and the ILEC personnel involved in the audit, 2) corrected billing back to date the circuit was established, 3) interest on the amount of corrected billing, and 4) loss of commingling rights after three faulted audits for one year

12/17/02



*Spirit of Service*

# Commingling Proposal

□ Qwest's commingling proposal promotes the availability of UNEs for facilities-based local competition, supports efficient use of interoffice facilities and strikes a competitive balance between ILECs & CLECs

## □ Standard

- Commingling is defined as the combination of EEL Loops and Private Line/Special Access channel termination circuits onto the same Multiplexed Interoffice Transport Facility billed at tariffed rates.

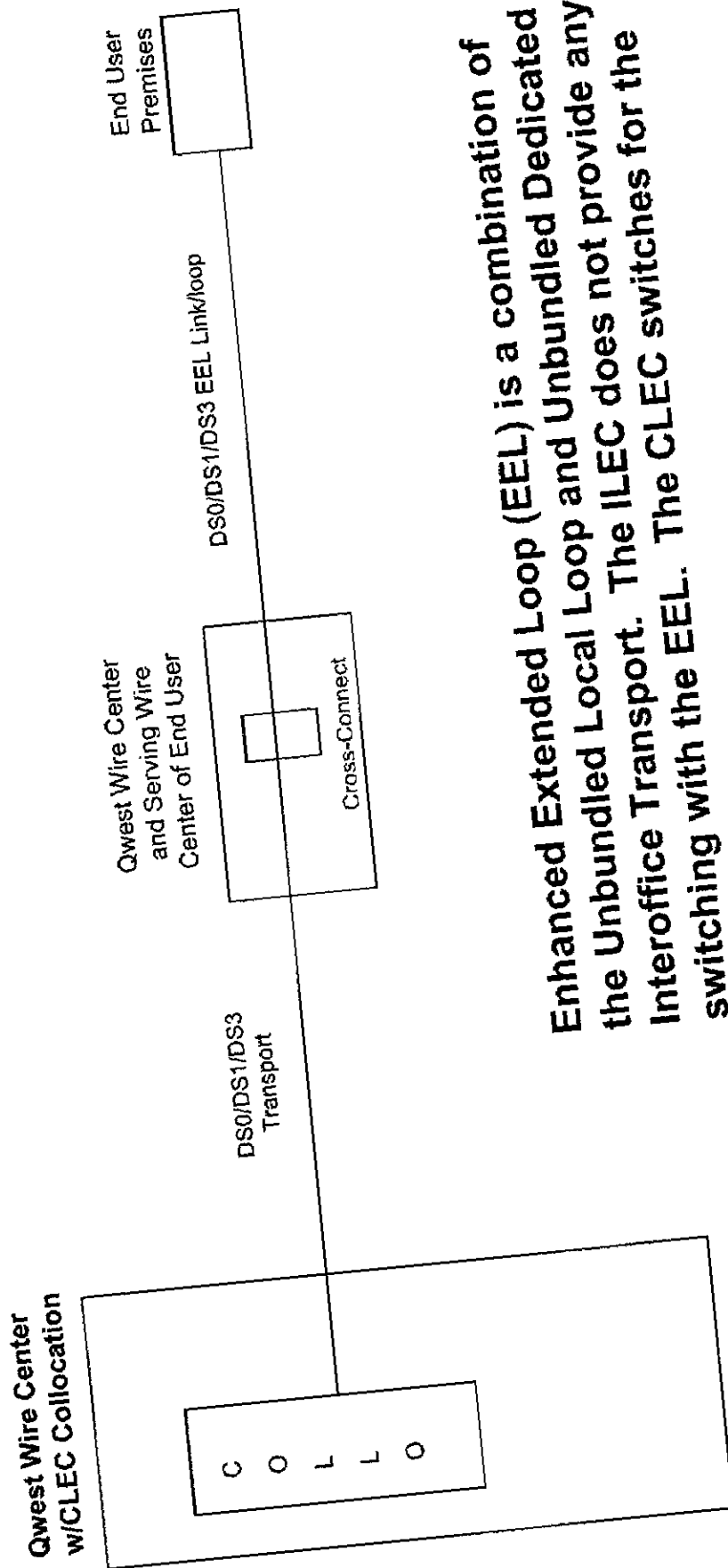
## □ Measurements

- The UNE loop portion of EELs connected to the Interoffice Facility (IOF) must satisfy the local use restrictions (51% local voice traffic)
- Commingling only permitted for DS1 level UNE-loops on a DS3 tariffed facility
- The co-mingled Interoffice facility must terminate in a CLEC collocation (one collocation required per LATA)

12/17/02

# Point to Point EEL

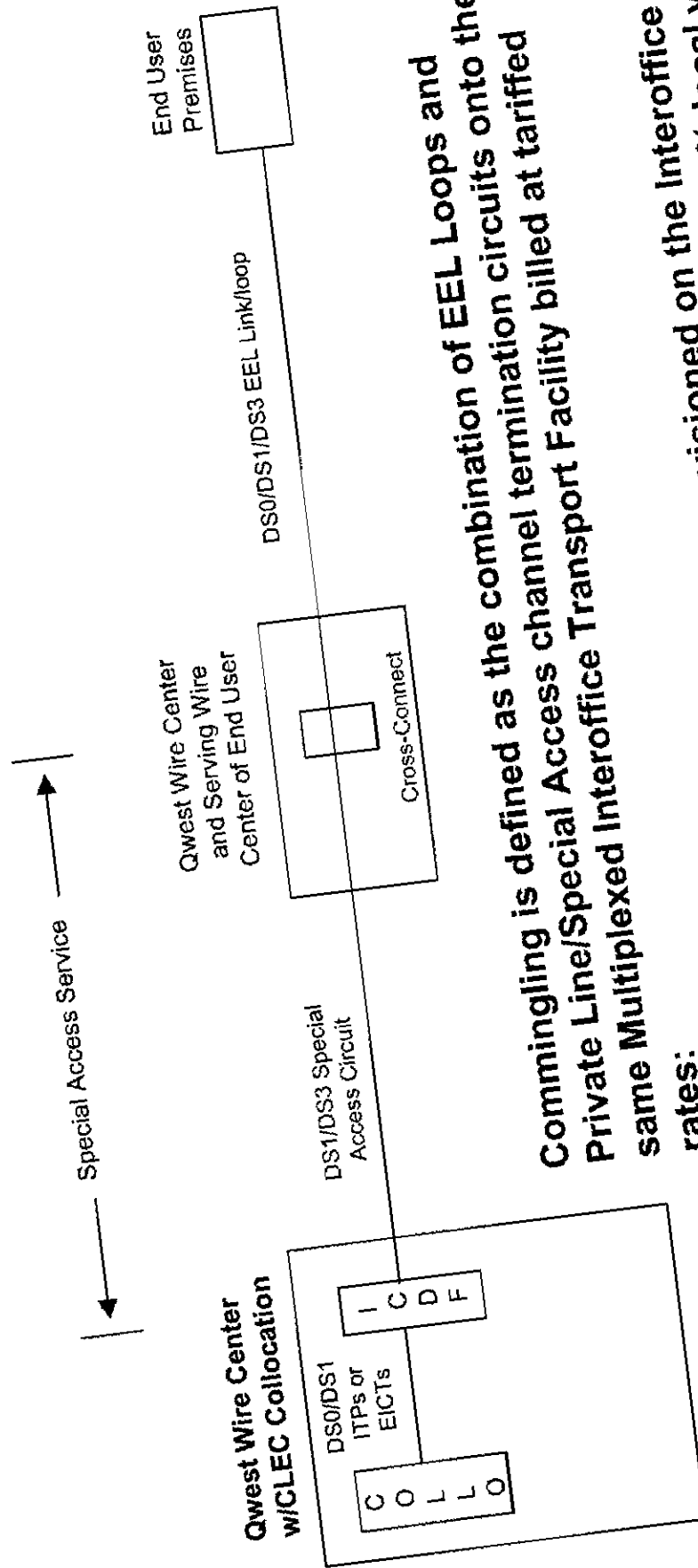
## Qwest's Current EEL Offering



Enhanced Extended Loop (EEL) is a combination of the Unbundled Local Loop and Unbundled Dedicated Interoffice Transport. The ILEC does not provide any switching with the EEL. The CLEC switches for the End User.

# EEL With Special Access Service

## Qwest's Commingling Proposal



Commingling is defined as the combination of EEL Loops and Private Line/Special Access channel termination circuits onto the same Multiplexed Interoffice Transport Facility billed at tariffed rates:

- 1) The UNE loop portion of EELs provisioned on the Interoffice Facility (IOF) must satisfy the local use restrictions (51% local voice traffic); 2) Commingling only permitted for DS1 level UNE-loops on a DS3 tariffed facility; 3) The co-mingled Interoffice facility must terminate in a CLEC collocation (one collocation required per LATA)

**Qwest.**

*Spirit of Service*

12/17/02

## Treatment of “De-listed” Network Elements Offered Under Section 271

- ☐ Subject only to Commission’s general pricing authority under sections 201 and 202 (*UNE Remand Order* ¶ 473), with no role for state review
- ☐ Likewise, the terms and conditions for elements provided under section 271 are governed only by the general requirements of sections 201 and 202, and not section 251 (*UNE Remand Order* ¶¶ 470, 473)
- ☐ Finding of “no impairment” would satisfy the requirements for non-dominance regarding the offering of that element under section 271 need not be included
- ☐ The offering of an element pursuant to section 271 would eliminate in a section 251 interconnection agreement.
- ☐ Note: Grant of Verizon’s petition for forbearance under section 271 requirement to provide element